

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HEATHER BOONE, et al.,

Plaintiffs,

v.

AMAZON.COM SERVICES, LLC,

Defendant.

Case No. 1:21-cv-00241-KES-BAM

Member Case: No. 1:22-cv-00146-NODJ-BAM

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

(Doc. 89)

Currently pending before the Court is the unopposed motion for preliminary approval of class action settlement filed by Plaintiffs Heather Boone, Roxanne Rivera, and Cristian Barrera on February 16, 2024. (Doc. 89.) Defendant Amazon.com Services, LLC did not file an opposition. The motion was submitted for decision to the assigned Magistrate Judge following the stipulation and consent of the parties. (Docs. 90, 91.) A hearing on the motion was held via Zoom video conference on March 29, 2024, before the Honorable Barbara A. McAuliffe. Counsel Don Foty appeared by Zoom video on behalf of Plaintiffs. Counsel Bradley Hamburger and Andrew Kilberg appeared by Zoom video on behalf of Defendant.

At the hearing, the Court and parties discussed the proposed settlement terms and identified revisions to the proposed notice of settlement. The Court requested that Plaintiffs submit an amended proposed notice of settlement and supplemental briefing on the following

1 issues: (1) designation of class representatives; (2) Rule 23 conditional class certification for
2 settlement purposes; (3) procedures for class notice; (4) a summary or cursory lodestar for
3 anticipated attorneys' fees; (5) documentation of costs; (6) appointment of Rust Consulting, Inc.
4 as Settlement Administrator; and (7) information supporting proposed enhancement payments to
5 the class representatives. (Doc. 95.) Plaintiffs filed supplemental briefing and a revised proposed
6 class notice on May 3, 2024. (Doc. 104.)

7 For the following reasons, the Court GRANTS the motion for preliminary approval of
8 class action settlement and sets a Final Approval Hearing for **October 29, 2024, at 9:00 AM** in
9 Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe.

10 **BACKGROUND**

11 **A. Relevant Procedural History**

12 This is a class and collective action initially brought under the Fair Labor Standards Act
13 (“FLSA”) and California law. On February 23, 2021, Plaintiffs Heather Boone and Roxanne
14 Rivera filed their complaint against Amazon.com Services, LLC (“Amazon”). Plaintiffs alleged
15 that Amazon implemented an illegal policy requiring its non-exempt workers to undergo a
16 COVID-19 screening each shift without pay. Plaintiffs claimed this examination constituted
17 compensable time and they therefore forwarded claims for (1) violations of the California Labor
18 Code for failure to pay for all hours worked, failure to pay overtime, failure to furnish timely,
19 accurate, itemized wage statements, and failure to pay all wages upon separation, (2) violation of
20 California’s Unlawful/Unfair Competition Law (“UCL”), and (3) and failure to pay overtime
21 under the FLSA. (Doc. 1.)

22 Plaintiffs filed a First Amended Complaint on May 14, 2021, and a Second Amended
23 Complaint on January 14, 2022, which added a representative claim under the Private Attorneys
24 General Act (“PAGA”). (Docs. 23, 36.)

25 On March 11, 2022, the district court dismissed Plaintiffs’ claim for violation of the UCL
26 with leave to amend, but denied the motion to dismiss in all other respects. (Doc. 39.) Following
27 Plaintiffs’ notice that they did not intend to file a third amended complaint, Amazon answered the
28 Second Amended Complaint on April 11, 2022. (Doc. 43.) Amazon also filed a motion for

1 certificate of appealability regarding the FLSA claim, which was not dismissed by the district
2 court. (Doc. 44.)

3 On April 15, 2022, the Court continued various dates, including the briefing schedule on
4 the motion for certificate of appealability, pending the parties' scheduled mediation on September
5 8, 2022. (Doc. 49.) The dates for a scheduling conference and briefing were continued two
6 additional times. (Docs. 54, 58.)

7 On March 10, 2023, Plaintiffs filed a motion for appointment of interim class counsel.
8 (Doc. 62.) Plaintiffs sought the appointment of the law office of Hodges & Foty, LLP as interim
9 class counsel, indicating that ten months after filing this lawsuit, another law firm filed a similar
10 action that seeks to represent the same class for the same claims in the matter of *Barrera v.*
11 *Amazon.cm Services, LLC*, No. 1:22-cv-0146-ADA-BAM. The Court required Plaintiffs to
12 provide notice of the motion to counsel in the *Barrera* matter and required the parties to address
13 why the actions should not be consolidated. (Doc. 64.)

14 On May 8, 2023, pursuant to the stipulation of the relevant parties, the district court
15 consolidated the *Barrera* matter with this action. (Doc. 70.)

16 On May 11, 2023, the Court held a status conference with the parties to address
17 consolidation, the motion to appoint interim counsel, the motion for certificate of appealability,
18 and potential settlement. (Doc. 72.)

19 On May 30, 2023, the Court issued findings and recommendations that recommended
20 appointing Hodges & Foty, LLP as interim class counsel. (Doc. 74.)

21 On June 6, 2023, the parties filed a stipulation that Amazon's motion to dismiss (or in the
22 alternative stay) *Barrera* is moot and that Amazon has preserved all its issues raised in that
23 motion. (Doc. 75.)

24 On August 22, 2023, the parties filed a notice of settlement. (Doc. 76.) Thereafter, the
25 Court set a deadline for filing dispositional papers, which was continued multiple times, and
26 vacated all other dates and matters. (Doc. 77.)

27 On October 18, 2023, the district court adopted the pending findings and
28 recommendations and granted the motion to appoint Hodges & Foty, LLP as interim class

1 counsel. (Doc. 80.)

2 On February 16, 2024, with Amazon’s consent, Plaintiffs Boone, Rivera, and Cristian
3 Barrera filed a Third Amended Complaint, which removed their collective action claims brought
4 under the FLSA. (See Doc. 88; Doc. 89-1, SA ¶ 40.) On the same date, Plaintiffs filed the instant
5 motion for preliminary approval of class action settlement. (Doc. 89.) By the motion, Plaintiffs
6 seek: (1) preliminary approval of the terms of the settlement and a stay of all non-settlement
7 related activity in this case; (2) approval of the Notice Packet to be sent to the class members; (3)
8 approval of the parties’ agreed-upon deadlines for the class members to exercise their rights in
9 connection with the proposed Settlement; and (4) entry of a Preliminary Approval Order setting a
10 Final Approval Hearing and directing the Notice Packet to be sent to the class members. (*Id.* at
11 4.)

12 **B. Events Leading to Settlement**

13 On April 6, 2023, the parties attended a full-day mediation with Lisa Klerman, an
14 experienced professional mediator. The matter did not resolve, but the parties continued
15 negotiations with the assistance of Ms. Klerman. The process culminated in a tentative settlement
16 at the end of August 2023. (Doc. 89 at 8.)

17 **1. Settlement of Class Claims**

18 Plaintiffs negotiated the settlement of behalf of all current and former non-exempt
19 employees of Amazon in California who underwent one or more COVID-19 temperature
20 screenings. (Doc. 89-1, Class Action Settlement Agreement and Release (“SA” or “Settlement
21 Agreement”) ¶ 39.)

22 Plaintiffs also negotiated settlement on behalf of non-California FLSA opt-in plaintiffs—
23 Taylor Bouie, Camryn McSweeney, Omar Ramirez Vasquez, and George Werito—related to
24 allegations of the failure to pay overtime in violation of the Fair Labor Standards Act. (SA ¶¶ 15,
25 20.)

26 Further, Plaintiffs negotiated settlement of the PAGA claims on behalf of all non-exempt
27 employees of Amazon in California during the relevant PAGA period who underwent one or
28 more COVID-19 temperature screenings. (SA at 5 and ¶¶ 25, 26.)

1 **2. Other Related Cases**

2 Plaintiff Barrera also has a separate action under PAGA pending in Orange County
3 Superior Court, based on the same allegations: *Barrera v. Amazon.com Services LLC* (Orange
4 County Sup. Ct. Case No. 30-2022-01242167-CU-OE-CXC). (Doc. 89 at 7.) As part of the
5 settlement, the parties agree that the *Barrera* state court action will be dismissed with prejudice
6 within fourteen days after entry of a final order approving the Settlement Agreement. They also
7 will make all reasonable efforts to ensure that the state court action remains stayed pending
8 approval of the settlement agreement. (*See* Doc. 89-1, SA ¶ 81.)

9 **C. Summary of Proposed Settlement**

10 **1. Settlement Class**

11 Plaintiffs seek to certify the following settlement class, which Amazon does not challenge:
12 All current and former non-exempt employees of Amazon.com Services, LLC in
13 California who underwent one or more COVID-19 temperature screenings during
14 the period of April 1, 2020 through July 17, 2021 for individuals who did not
15 work at the facility known as OAK4 in Tracy, California, or the period of April 1,
16 2020 through February 23, 2022 for those individuals who worked at the facility
17 known as OAK4 in Tracy, California.

18 (Doc. 89-1, Ex. A to Settlement Agreement, Notice of Class Action Settlement ¶ A.) There are
19 believed to be approximately 250,000 Settlement Class Members. (Doc 89-2, Ex. A to Foty Decl.
20 at 10; Doc. 104 at 9.)

21 **2. Monetary Relief Under the Settlement**

22 Amazon has agreed to pay \$5,500,000.00 to settle this action (the “Gross Settlement Fund”).
23 (SA at ¶ 15.) The \$5,500,000 Gross Settlement Fund is to be allocated as follows:

- 24 (1) Class Representative Enhancement Payments of \$10,000 to each of the three
25 named plaintiffs for a total of \$30,000. (SA ¶¶ 7, 45.)
26 (2) Non-California Payments totaling \$200, representing \$50 to each of the four Non-
27 California FLSA Opt-In Plaintiffs: Taylor Bouie, Camryn McSweeney, Omar
28 Ramirez Vasquez, and George Werito. (SA ¶¶ 20, 21, 46.)
29 (3) Class Counsel Award of attorneys’ fees of not more than one third (1/3) of the
30 Gross Settlement Fund (\$1,833,333.33) and costs and expenses not to exceed

1 \$100,000. (SA ¶¶ 2, 44.)

2 (4) Settlement Administration Costs not to exceed \$392,341.00 to the settlement
3 administrator. (SA ¶ 37.)

4 (5) The PAGA Settlement Amount of \$100,000 to be allocated as follows: (1)
5 \$75,000 California Labor and Workforce Development Agency (“LWDA”)
6 penalty; and (2) \$25,000 employee payment to PAGA settlement members on a
7 pro rata basis based on the number of weeks worked or workweeks during the
8 PAGA period. (SA ¶¶ 25, 48.)

9 (See SA ¶ 19 (defining “Net Settlement Amount”).)

10 **3. Net Settlement Amount**

11 If the allocations are awarded in full, the Net Settlement Amount available for distribution
12 is an estimated \$3,044,125.67. Amazon maintains no reversionary right to any portion of the Net
13 Settlement Amount. (SA ¶¶ 43, 49.) If the Court reduces the enhancement payments, the non-
14 California payments, the class counsel award, the PAGA settlement amount, and/or the settlement
15 administration costs, then the Net Settlement Amount will increase and will be distributed to
16 participating class members. (*Id.*) No portion of the Net Settlement Amount will revert to
17 Amazon.

18 The settlement share for each participating class member will be calculated on a pro rata
19 basis depending on the number of “weeks worked” or “workweeks” (defined as any calendar
20 week during the Class Period) in which a class member performed at least one day of work for
21 Amazon. (SA ¶ 50.) Individual PAGA payments will be calculated and apportioned from the
22 25% portion of the PAGA settlement amount on the same basis. (SA ¶ 50.)

23 Federal Rule of Civil Procedure 23 (“Rule 23”) class members will not be required to
24 submit a claim form to participate and receive their settlement amount, but they may submit a
25 request to opt out. (SA ¶¶ 50, 60.) Settlement checks will be valid for 180 days. If a check
26 remains uncashed, then the funds from the uncashed check will be sent to the State Controller’s
27 Office under the Unclaimed Property Law Statutes. (SA ¶ 69.)

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1 **4. Scope of Release**

2 “Released Class Claims” means all claims, actions, demands, causes of action, suits,
3 debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the
4 facts and legal theories asserted in the operative complaints of the Actions, or which relate to the
5 primary rights asserted in the operative complaints, including without limitation claims for (1)
6 failure to pay all wages in violation of Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1, 1198, (2)
7 failure to pay overtime wages in violation of Labor Code §§ 510, 558, and IWC Wage Order
8 42001, (3) failure to provide accurate itemized wage statements in violation of Labor Code § 226,
9 (4) failure to maintain accurate records in violation of Labor Code §§ 226 and 1174, (5) failure to
10 pay wages upon separation of employment in violation of Labor Code §§ 201-203, 218, (6)
11 engaging in unlawful, unfair and/or fraudulent business practices in violation of Business &
12 Professions Code §§ 17200 et seq., and (7) failure to pay overtime wages in violation of 29
13 U.S.C. § 207. Notwithstanding the above, the Released Class Claims shall only include claims
14 related to or arising from COVID-19 screenings. The period of the Released Class Claims shall
15 extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same
16 as that of the Release. (SA ¶ 31.)

17 Each class member who has not opted out shall release all claims during the class period
18 related to or arising from COVID-19 screenings. (SA ¶¶ 31, 63.a.)

19 Plaintiffs also agree to a general release of claims arising out of their employment with
20 Amazon as of the date of execution of the Settlement Agreement. (SA ¶ 63.c.) Plaintiffs also
21 agree to release all PAGA claims on behalf of themselves and all PAGA employees that accrued
22 through the end of the PAGA period or that could have been asserted in this action based on
23 claims related to or arising from COVID-19 screenings. (SA ¶¶ 33, 63.b.)

24 **5. Notice**

25 The parties have designated Rust Consulting, Inc. as the settlement administrator. (SA ¶
26 38.) Based upon the declaration of Eric Bishop, a vice president in the labor and employment
27 section, Rust Consulting is a highly experienced administration firm specializing in large-scale
28 class action settlements. Its services include project and data management, notification, contact

1 center and websites, claims processing, fund management and distribution, and tax reporting.
2 (Doc. 104-6, Declaration of Eric Bishop ¶ 4.) Further, its dedicated labor and employment
3 operations team has administered over 3,700 labor and employment cases involving wage-and-
4 hour, FLSA, discrimination, ERISA, and PAGA matters. (*Id.*, ¶ 9.)

5 Rust Consulting will notify class members as follows: Within thirty (30) calendar days
6 after preliminary approval by the Court, Amazon will provide a Class List to the Settlement
7 Administrator. Within thirty (30) calendar days after receiving the class list, the Settlement
8 Administrator will send the notice to all settlement class members using the most current, known
9 personal email addresses identified in the Class List. If there is no personal email address in the
10 Class List, then the Settlement Administrator will mail the notice by first class mail. Within sixty
11 (60) calendar days after emailing or mailing of the class notice, class members must opt-out or
12 object to the settlement. (SA ¶¶ 36, 55-56.)

13 **6. Opt-outs (Exclusions) and Objections**

14 There is no claim form for the Rule 23 class. Class members are given sixty (60) calendar
15 days after emailing or mailing of the notice to opt out in writing. (SA ¶¶ 36, 60.) As delineated
16 in the revised class notice, requests for exclusion must be submitted to the Settlement
17 Administrator. (Doc. 104-1, Ex. 1 to Supplemental Brief, Revised Notice of Class Action
18 Settlement (“Notice Packet”) ¶ F.) There is no right to exclude from the PAGA claims and any
19 Rule 23 class member that timely submits a request for exclusion will still receive an individual
20 PAGA payment representing their portion of the PAGA Settlement Amount. (SA ¶ 60.)

21 Class members also are given sixty (60) calendar days to object to the Settlement
22 Agreement. (SA ¶ 66.) Per the revised class notice, to object to the settlement, a class member
23 must sign and file a written objection to the settlement by either (a) sending it to the Court with a
24 postmark on or before the deadline; or (b) filing it with the Court on or before the deadline. (Doc.
25 104-1, Ex. 1, Notice Packet ¶ G.) Class members who object to the settlement may appear at the
26 Final Approval Hearing with their own attorney. (*Id.*) Class members who fail to object will be
27 deemed to have waived all objections and will be foreclosed from making any objections unless
28 they appear at the Final Approval Hearing. Class members who fail to object may still appear at

1 the Final Approval Hearing and present their objections. (SA ¶ 66.)

2 Class members also have an opportunity to dispute the workweek information provided in
3 their notice by contacting the Settlement Administrator. (SA ¶ 59.)

4 **7. PAGA Settlement**

5 The settlement contemplates a PAGA Settlement Amount of \$100,000 to be allocated as
6 follows: (1) \$75,000 LWDA penalty; and (2) \$25,000 employee payment to PAGA settlement
7 members on a pro rata basis based on the number of weeks worked or workweeks during the
8 PAGA period. (SA ¶¶ 25, 48.)

9 **8. Class Representative Enhancement Awards**

10 Plaintiffs request that the Court approve enhancement payments of \$10,000 to each of the
11 three named plaintiff for a total of \$30,000. (SA ¶¶ 7, 45.)

12 According to Plaintiff Boone's declaration, she has actively participated in this case
13 during the past three years by assisting the attorneys and their staff in the investigation and in
14 information gathering. (Doc. 104-3, Declaration of Heather Boone ("Boone Decl.") ¶ 6.) The
15 following matters describe her assistance to the attorneys in this matter: providing information
16 about her work experience with Amazon to her attorneys, reviewing her pay and work records,
17 providing statements of factual details to her attorneys to assist them in understanding her work
18 experience with Amazon and the potential damages, engaging in discussions with her attorneys
19 and their staff about the potential lawsuit during the initial investigation, and after the case was
20 filed, discussing the complaint with the attorneys and the claims that were alleged, consulting
21 with her attorneys regarding the status of the case during the lawsuit, and discussing mediation
22 with her attorneys and potential resolution of this action. (Boone Decl. ¶ 7.) Plaintiff Boone
23 further declares that she has spent considerable time trying to help the class of Amazon
24 employees recover compensation from Amazon and believes that she has spent approximately 40
25 hours of her time trying to help vindicate the rights of the Class Members. (Boone Decl. ¶ 9.)
26 Plaintiff Boone also indicates that she was "at risk of negative reputational consequences and
27 adverse employment action." (Boone Decl. ¶ 13.)

28 According to Plaintiff Rivera's declaration, she likewise has actively participated in this

1 case during the past three years by assisting the attorneys and their staff in the investigation and in
2 information gathering associated with this action. (Doc. 104-4, Declaration of Roxanne Rivera
3 (“Rivera Decl.”) ¶ 6.) Plaintiff Rivera describes her assistance to the attorneys in this matter to be
4 similar to those engaged in by Plaintiff Boone. (Rivera Decl. ¶ 7.) Plaintiff Rivera declares that
5 she has spent considerable time trying to help the class of Amazon employees recover
6 compensation from Amazon and believes that she has spent approximately 55 hours of her time
7 trying to help vindicate the rights of the Class Members. (Rivera Decl. ¶ 9.) Plaintiff Rivera also
8 indicates that she was “at risk of negative reputational consequences and adverse employment
9 action.” (Rivera Decl. ¶ 13.)

10 Plaintiff Barrera details similar time, efforts, and tasks in assisting with this action. (Doc.
11 104-5, Declaration of Cristian Barrera (“Barrera Decl.”) at ¶¶ 6-7.) In particular, Plaintiff Barrera
12 estimates spending approximately 20-30 hours of time trying to help vindicate the rights of the
13 Class Members. (Barrera Decl. ¶ 8.) Additionally, Plaintiff Barrera asserts “considerable risk”
14 by bringing this lawsuit and being “exposed to the negative reputational consequences of . . .
15 being tied to a class action lawsuit against one of the largest companies in the country.” (Barrera
16 Decl. ¶ 9.)

17 In addition to working with counsel, Plaintiffs have agreed to a full general release of their
18 claims against Amazon, which is broader than the release that applies to the Class Members. (SA
19 ¶¶ 63.c. and 63.d.)

20 **9. Attorneys’ Fees and Costs**

21 Class Counsel (identified above) seek preliminary approval of their request for attorneys’
22 fees in the amount of \$1,833,333.33 (1/3 of the Gross Settlement Fund), and litigation costs not to
23 exceed \$100,000. (SA ¶¶ 2, 44.)

24 **10. Other Notable Terms of Settlement**

25 Amazon has the option to terminate the settlement agreement if ten percent (10%) or more
26 of all individuals eligible to become members of the Settlement Class submit timely and valid
27 Requests for Exclusion or are otherwise deemed by the Court not be bound by the Settlement.
28 (SA ¶ 62.) No portion of the Net Settlement Amount will revert to or be retained by Amazon.

1 (SA ¶¶ 43, 49.)

2 **LEGAL STANDARDS**

3 Court approval of a class action settlement requires a two-step process—a preliminary
 4 approval followed by a later final approval. *See Tijero v. Aaron Bros., Inc.*, No. C 10-01089
 5 SBA, 2013 WL 60464, at *6 (N.D. Cal. Jan. 2, 2013) (“The decision of whether to approve a
 6 proposed class action settlement entails a two-step process.”); *West v. Circle K Stores, Inc.*, No.
 7 CIV. S-04-0438 WBS GGH, 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006) (“[A]pproval of
 8 a class action settlement takes place in two stages.”). At the preliminary approval stage, the court
 9 “must make a preliminary determination on the fairness, reasonableness, and adequacy of the
 10 settlement terms.” Fed. R. Civ. P. 23(e). However, the “settlement need only be potentially fair,
 11 as the Court will make a final determination of its adequacy at the hearing on Final Approval.”
 12 *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original);
 13 *Gruber v. Grifols Shared Services North America, Inc.*, No. 2:22-CV-02621-SPG-AS, 2023 WL
 14 8610504, at *3 (C.D. Cal. Nov. 2, 2023).

15 **A. Certification of the Class**

16 To certify a class, a party must demonstrate that all of the prerequisites of Federal Rule of
 17 Civil Procedure 23(a), and at least one of the requirements of Rule 23(b) has been met. *Wang v.*
 18 *Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013); *see also Valentino v. Carter-*
 19 *Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Under Rule 23(a), the four requirements that
 20 must be met for class certification are: “(1) the class is so numerous that joinder of all members is
 21 impracticable; (2) there are questions of law or fact common to the class; (3) the claims or
 22 defenses of the representative parties are typical of the claims or defenses of the class; and (4) the
 23 representative parties will fairly and adequately protect the interest of the class.” Fed. R. Civ. P.
 24 23(a)(1)–(4). These factors are known as “numerosity,” “commonality,” “typicality,” and
 25 “adequacy,” respectively. Assessing these requirements involves “rigorous analysis” of the
 26 evidence. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351, (2011).

27 Rule 23(b) requires a plaintiff to establish one of the following: (1) that there is a risk of
 28 substantial prejudice from separate actions; (2) that declaratory or injunctive relief benefitting the

1 class as a whole would be appropriate; or (3) that common questions of law or fact predominate
2 and the class action is superior to other available methods of adjudication. Fed. R. Civ. P.
3 23(b)(1)– (3). Rule 23(b)(3) “requires only that the district court determine after rigorous analysis
4 whether the common question predominates over any individual questions, including
5 individualized questions about injury or entitlement to damages.” *Olean Wholesale Grocery*
6 *Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022) (en banc). Rule 23(c)(1)
7 permits a court to make a conditional determination of whether an action should be maintained as
8 a class action, subject to final approval at a later date. *Dukes v. Wal-Mart Stores, Inc.*, No. C 01-
9 02252 CRB, 2012 WL 4329009, at *4 (N.D. Cal. Sept. 21, 2012).

10 **B. Court Approval of Class Settlement Agreements**

11 Rule 23(e)(2) mandates that any settlement in a class action may only be approved by the
12 court after finding that the settlement is “fair, reasonable, and adequate” upon consideration of
13 whether:

- 14 (A) the class representatives and class counsel have adequately represented the class;
- 15 (B) the proposal was negotiated at arm’s length;
- 16 (C) the relief provided for the class is adequate, taking into account:
 - 17 (i) the costs, risks, and delay of trial and appeal;
 - 18 (ii) the effectiveness of any proposed method of distributing relief to the class
19 including the method of processing class-member claims;
 - 20 (iii) the terms of any proposed award of attorney’s fees, including timing of
payment; and
 - 21 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 22 (D) the proposal treats class members equitably relative to each other.

23 Fed. R. Civ. P. 23(e)(2)(A)–(D). The role of the district court in evaluating the fairness of the
24 settlement is not to assess the individual components, but to consider the settlement as a whole.
25 *Lane v. Facebook, Inc.*, 696 F.3d 811, 818–19 (9th Cir. 2012), reh’g denied, 709 F.3d 791 (9th
26 Cir. 2013). In reviewing a proposed settlement, the court represents those class members who
27 were not parties to the settlement negotiations and agreement. *In re Toys R Us-Delaware, Inc.—*
28 *Fair & Accurate Credit Transactions Act Litig.*, 295 F.R.D. 438, 448 (C.D. Cal. 2014). The

1 Ninth Circuit has recognized a strong judicial policy favoring settlement, particularly of complex
2 class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

3 Nevertheless, even where a proposed settlement is unopposed, the court must fully
4 examine whether the proposed settlement class satisfies Rule 23(a)'s requirements of numerosity,
5 commonality, typicality, and adequacy of representation. *Hanlon v. Chrysler Corp.*, 150 F.3d
6 1011, 1019 (9th Cir. 1998), overruled on other grounds by *Wal-Mart Stores, Inc. v. Dukes*, 564
7 U.S. 338 (2011). This more exacting review of class settlements reached before formal class
8 certification is required to ensure that the class representatives and their counsel do not receive a
9 disproportionate benefit "at the expense of the unnamed plaintiffs who class counsel had a duty to
10 represent." *Lane*, 696 F.3d at 819 (quotation and citation omitted).

11 **DISCUSSION – RULE 23 REQUIREMENTS**

12 **A. Numerosity**

13 Numerosity is met if "the class is so numerous that joinder of all members is
14 impracticable." Fed. R. Civ. P. 23(a)(1). There is no absolute number or cut-off for determining
15 numerosity, and the specific facts of each case may be examined. *Schwarm v. Craighead*, 233
16 F.R.D. 655, 660 (E.D. Cal. 2006); *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D. Cal.
17 2008) ("Courts have not required evidence of specific class size or identity of class members to
18 satisfy the requirements of Rule 23(a)(1).") "A reasonable estimate of the number of purported
19 class members satisfies the numerosity requirement of Rule 23(a)(1)." *In re Badger Mountain Irr.*
20 *Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 1992).

21 Here, the proposed class consists of approximately 250,000 members. (Doc 89-2, Ex. A
22 to Foty Decl. at 10; Doc. 104 at 9.) The Court finds that the proposed class therefore satisfies the
23 numerosity requirement as joinder of such members is impracticable. *See also Celano v. Marriott*
24 *Int'l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007) (noting "courts generally find that the
25 numerosity factor is satisfied if the class comprises 40 or more members and will find that it has
26 not been satisfied when the class comprises 21 or fewer."); *Cervantez*, 253 F.R.D. at 569 ("Courts
27 have held that numerosity is satisfied when there are as few as 39 potential class members.")

28 ///

1 **B. Commonality**

2 Commonality requires “questions of law or fact common to the class.” Fed. R. Civ. P.
3 23(a)(2). Parties seeking class certification must prove their claims depend on a common
4 contention of such a nature it is capable of class-wide resolution, meaning the determination of its
5 truth or falsity will resolve an issue central to the validity of each claim at once. *Wal-Mart*, 564
6 U.S. at 350. Class-wide proceedings must generate common answers to common questions of law
7 or fact apt to drive resolution of the litigation. *Id.* The parties must demonstrate class members
8 have suffered the same injury. *Id.* at 349-350.

9 Plaintiffs appear to suggest that the commonality requirement is satisfied because the case
10 primarily involves resolution of a central issue: whether the time spent waiting in line and
11 completing the COVID-19 screening is compensable under California. Plaintiffs contend that
12 resolution of this issue can be resolved on a class basis because the policies and procedures for
13 screening were the same for all class members and there is common proof applicable to all class
14 members. (Doc. 89 at 18.)

15 In their supplemental briefing, Plaintiffs indicate that they are challenging Amazon’s
16 COVID-19 screening compensation policy that affected all class members. First, as indicated,
17 they claim that the time spent waiting in line and completing the COVID-19 screenings is
18 compensable under California law. Second, they claim that as a result of Amazon’s decision not
19 to automatically compensate employees for time spent undergoing COVID-19 screenings,
20 Amazon’s wage statements were legally deficient. Plaintiffs assert that each of these claims
21 challenges Amazon’s conduct that affected all Class Members in precisely the same way. (Doc.
22 104 at 11-12.)

23 Plaintiffs also explain that the process for conducting the screenings was similar across all
24 Amazon fulfillment centers and distribution centers. Under Amazon’s company-wide policy,
25 every hourly employee was required to (1) report to a designated location at an Amazon facility,
26 (2) wait in line standing six feet apart from other employees, (3) answer questions about whether
27 they had any signs or symptoms of the Coronavirus, (4) have their temperature taken, (5) wear an
28 Amazon approved mask, and (6) pass the health examination to work that day. (Doc. 89-1 at 6.)

1 The Court finds that the commonality requirement is met because Plaintiffs are
2 challenging Amazon's COVID-10 compensation policy that applied to all class members.

3 **C. Typicality**

4 Rule 23 also requires that "the claims or defenses of the representative parties are typical
5 of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Under Rule 23's permissive
6 standard, claims "need not be substantially identical," but are typical if the representative's claims
7 are "reasonably co-extensive with those of the absent class members." *Parsons v. Ryan*, 754 F.3d
8 657, 685 (9th Cir. 2014) (quoting *Hanlon*, 150 F.3d at 1020). Typicality is based on the "nature of
9 the claim or defense of the class representative, and not to the specific facts from which it arose or
10 the relief sought." *Parsons*, 754 F.3d at 685 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d
11 497, 508 (9th Cir. 1992)). Typicality tests "whether other members have the same or similar
12 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
13 whether other class members have been injured by the same course of conduct." *Id.* (quoting
14 *Hanon*, 976 F.2d at 508). The requirements of commonality and typicality occasionally merge,
15 and "[b]oth serve as guideposts for determining whether under the particular circumstances
16 maintenance of a class action is economical and whether the named plaintiff's claim and the class
17 claims are so interrelated that the interests of the class members will be fairly and adequately
18 protected in their absence." *Id.* (quoting *Wal-Mart*, 564 U.S. at 349 n.5).

19 As with the commonality requirement, the Court finds the typicality requirement is
20 satisfied because Plaintiffs' claims arise from the same factual bases and are premised upon the
21 same legal theories as those applicable to the purported class members. Plaintiffs, like every other
22 class member, were non-exempt hourly employees of Amazon, who were required to complete
23 the COVID-19 screenings, who were subject to the same screening policies and procedures, and
24 who performed the screenings off the clock.

25 **D. Adequacy of Representation**

26 The Court must ensure "the representative parties will fairly and adequately protect the
27 interests of the class." Fed. R. Civ. P. 23(a)(4). In determining whether the named plaintiffs will
28 adequately represent the class, courts must resolve two questions: "(1) do the named plaintiffs and

1 their counsel have any conflicts of interest with other class members and (2) will the named
2 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Ellis v. Costco*
3 *Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (quoting *Hanlon*, 150 F.3d at 1020).
4 “Adequate representation depends on, among other factors, an absence of antagonism between
5 representatives and absentees, and a sharing of interest between representatives and absentees.”
6 *Ellis*, 657 F.3d at 985 (citing *Molski v. Gleich*, 318 F.3d 937, 955 (9th Cir. 2003)). Class
7 representatives “must be part of the class and possess the same interest and suffer the same injury
8 as the class members.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 626 (1997) (internal
9 quotations and citations omitted). This factor also tends to merge with the commonality and
10 typicality criteria of Rule 23. *Id.* at 626 n.20.

11 Here, Plaintiffs and the class share common injuries and generally possess the same
12 interests. They are suing for the same damages arising out of the same course of conduct.
13 Plaintiffs do not appear have a conflict of interest with the purported class. (See Boone Decl. ¶ 6;
14 Rivera Decl. ¶ 6; Barrera Decl. ¶ 6.)

15 The Court must also consider the adequacy of representation by Class Counsel. As
16 previously indicated, the Court has already approved the appointment of Hodges & Foty, LLP as
17 interim class counsel. (Doc. 80.) In making that determination, the Court found that Hodges &
18 Foty, LLP had experience in handling class actions and the types of claims asserted here. For the
19 same reasons previously identified by the Court, Hodges & Foty, LLP should be appointed class
20 counsel. (See Doc. 74.)

21 Accordingly, the Court finds Plaintiffs have demonstrated they will adequately and fairly
22 protect the interests of the class. Fed. R. Civ. P. 23(a)(4). For purposes of settlement only, the
23 Court hereby appoints Plaintiffs Boone, Rivera, and Barrera as Class Representatives. Similarly,
24 the Court appoints Hodges & Foty, LLP as Class Counsel in this matter.

25 **E. Rule 23(b)(3) Requirements**

26 Both the predominance and superiority requirements are satisfied under Rule 23(b)(3).

27 *1. Predominance*

28 “The first requirement of Rule 23(b)(3) is predominance of common questions over

1 individual ones.” *Valentino*, 97 F.3d at 1234. The predominance inquiry “trains on the legal or
2 factual questions that qualify each class member’s case as a genuine controversy, questions that
3 preexist any settlement,” and “tests whether proposed classes are sufficiently cohesive to warrant
4 adjudication by representation.” *Amchem Prod.*, 521 U.S. at 594. If a common question will drive
5 the resolution of the litigation, the class is sufficiently cohesive. *Jabbari v. Farmer*, 965 F.3d
6 1001, 1005 (9th Cir. 2020) (court must determine which questions are likely “to drive the
7 resolution of the litigation”).

8 Plaintiffs indicate that the claims are based on resolution of a central issue: whether the
9 time spent waiting in line and completing the COVID-19 screening is compensable under
10 California law. Plaintiffs contend that resolution of this issue can be resolved on a class basis
11 because the policies and procedures for screening were the same for all class members and there
12 is common proof applicable to all class members. (Doc. 89 at 18.)

13 The Court finds that the claims asserted all arise from Amazon’s screening policy and
14 issues related to this policy predominate over any individual issues.

15 2 *Superiority*

16 The class action mechanism is the superior method for adjudicating this lawsuit. Fed. R.
17 Civ. P. 23(b)(3). “Where classwide litigation of common issues will reduce litigation costs and
18 promote greater efficiency, a class action may be superior to other methods of litigation. A class
19 action is the superior method for managing litigation if no realistic alternative exists.” *Valentino*,
20 97 F.3d at 1234–35. Factors relevant to the superiority requirement include:

21 (A) the class members’ interests in individually controlling the prosecution or defense of
22 separate actions;

23 (B) the extent and nature of any litigation concerning the controversy already begun by or
24 against class members;

25 (C) the desirability or undesirability of concentrating the litigation of the claims in the
26 particular forum; and

27 (D) the likely difficulties in managing a class action.

28 Fed. R. Civ. P. 23(b)(3); *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir.),

1 opinion amended on denial of reh'g, 273 F.3d 1266 (9th Cir. 2001) (“In determining superiority,
2 courts must consider the four factors of Rule 23(b)(3).”) “A consideration of these factors
3 requires the court to focus on the efficiency and economy elements of the class action so that
4 cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a
5 representative basis.” *Zinser*, 253 F.3d at 1190. However, where “confronted with a request for
6 settlement-only class certification, a district court need not inquire whether the case, if tried,
7 would present intractable management problems, for the proposal is that there be no trial.”
8 *Amchem Prod., Inc.*, 521 U.S. at 620.

9 Resolution of the claims of approximately 250,000 total class members in one class action
10 settlement is far superior to individual lawsuits because it promotes consistency and efficiency of
11 adjudication. Further, the Court finds a class action avoids the inefficiency of each class member
12 litigating similar claims individually. Therefore, the Court finds that a class action is the superior
13 method for adjudicating the claims in this action.

14 For the foregoing reasons, the Court finds Plaintiffs have sufficiently met the requirements
15 of Rule 23(a) and (b). The Settlement Class is preliminarily certified for purposes of settlement,
16 subject to a final fairness hearing and certification of the settlement class under the Federal Rules
17 of Civil Procedure and related case law.

18 **DISCUSSION – PRELIMINARILY APPROVING CLASS ACTION
19 SETTLEMENT**

20 Having concluded that class treatment appears to be warranted, the Court now considers
21 whether the proposed settlement is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2); *In re*
22 *Bluetooth Headset Products Liab. Litigation.*, 654 F.3d 935, 946 (9th Cir. 2011). The role of the
23 district court in evaluating the fairness of the settlement is not to assess the individual
24 components, but to consider the settlement as a whole. *Lane*, 696 F.3d at 818–19. Preliminary
25 approval of a settlement and notice to the proposed class is appropriate if: (i) the proposed
26 settlement appears to be the product of serious, informed, non-collusive negotiations; and (ii) the
27 settlement falls within the range of possible approval, has no obvious deficiencies, and does not
28 improperly grant preferential treatment to class representatives or segments of the class. *In re*

1 *Tableware Antitrust Litigation*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing *Schwartz v.*
 2 *Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n.12 (E.D. Pa. 2001)).

3 In making this inquiry, the Court should weigh: (1) the strength of the plaintiff's case; (2)
 4 the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
 5 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
 6 discovery completed and the stage of the proceedings; (6) the experience and views of counsel;
 7 (7) the presence of a governmental participant; and (8) the reaction of the class members of the
 8 proposed settlement. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at 946. Some of these
 9 eight factors cannot be fully assessed until the court conducts its final fairness hearing. *Zwick v.*
 10 *Diamond Resorts Mgmt. Inc.*, 343 F.R.D. 101, 119 (D. Ariz. 2022). Thus, at the preliminary
 11 approval stage, courts need only evaluate "whether the proposed settlement [1] appears to be the
 12 product of serious, informed, non-collusive negotiations, [2] has no obvious-deficiency, [3] does
 13 not improperly grant preferential treatment to class representatives or segments of the class and
 14 [4] falls within the range of possible approval." *Zwick*, 343 F.R.D. at 119; *accord Collins v.*
 15 *Cargill Meat Sols. Corp.*, 274 F.R.D. 294, 301-303 (E.D. Cal. 2011) (citing *In re Tableware*
 16 *Antitrust Litig.*, 484 F. Supp. 2d at 1079). Because collusion may not be evident on a settlement's
 17 face, courts must be vigilant for subtle signs "class counsel have allowed pursuit of their own
 18 self-interests and that of certain class members to infect the negotiations." *In re Bluetooth*
 19 *Headset Prod. Liab. Litig.*, 654 F.3d at 947.

20 At this juncture, the Court will review the parties' Settlement Agreement according to the
 21 four *Zwick* considerations listed above and conduct a cursory review of its terms in deciding
 22 whether to order the parties to send the proposed notice to Class Members and conduct the final
 23 approval hearing.

24 **A. The Proposed Settlement Appears to be the Product of Serious, Informed, Non-**
 25 **Collusive Negotiations**

26 The Ninth Circuit observed that "the very essence of a settlement is compromise, 'a
 27 yielding of absolutes and an abandoning of highest hopes.' " *Officers for Justice v. Civil Serv.*
 28 *Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). Thus, when

1 analyzing the amount offered in settlement, the Court should examine “the complete package
 2 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative
 3 measure of what might have been achieved by the negotiators.” *Id.* at 625, 628. The Court must
 4 look at the means and negotiations by which the parties settled the action in addition to reviewing
 5 the Proposed Settlement Agreement for obvious deficiencies. *Zwicki*, 343 F.R.D. at 120.

6 As Plaintiffs indicate, the parties reached a settlement after participating in a mediation
 7 and subsequent settlement negotiations. Plaintiffs indicate that the Settlement Agreement is the
 8 product of extensive, arm’s-length negotiations, which were lengthy and in-depth. (Doc. 89 at
 9 13.) The parties discussed the merits of the case, class certification, and damages. (*Id.*) Plaintiffs
 10 indicate that counsel were able to make an informed assessment regarding the merits of their
 11 claims and defenses. (*Id.*) Further, negotiations were informed by the knowledge of Plaintiffs’
 12 counsel gained through informal discovery, with the aid of a statistics expert who calculated an
 13 estimated amount owed. (*Id.*) Plaintiffs’ counsel evaluated the merits of the case, but recognized
 14 that there were challenges in the litigation that could pose significant risks. (*Id.* at 14.)

15 **B. Obvious Deficiencies**

16 Obvious deficiencies in a settlement agreement include “any subtle signs that class
 17 counsel have allowed pursuit of their own self-interests to infect the negotiations.” *McKinney-*
Drobnis v. Oreshack, 16 F.4th 594 (9th Cir. 2021) (quoting *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944
 19 F.3d 1035, 1043 (9th Cir. 2019)). The Ninth Circuit has identified three such “subtle signs,”
 20 which it refers to as the *Bluetooth* factors: “(1) when counsel receives a disproportionate
 21 distribution of the settlement; (2) when the parties negotiate a clear-sailing arrangement, under
 22 which the defendant agrees not to challenge a request for an agreed-upon attorney’s fee; and (3)
 23 when the agreement contains a kicker or reverter clause that returns unawarded fees to the
 24 defendant, rather than the class.” *McKinney-Drobnis*, 16 F.4th at 607–08 (citation omitted); *In re*
 25 *Bluetooth*, 654 F.3d at 947 (internal quotation and citation omitted).

26 1. *Disproportionate Distribution of the Settlement to Counsel*

27 Here, Class Counsel seek 1/3 of the Gross Settlement Fund for attorneys’ fees. As
 28 explained more fully below, the Court does not consider this request a deficiency.

1 2. *Clear-sailing Arrangement for Attorneys' Fees*

2 There does not appear to be a clear-sailing arrangement for attorneys' fees.

3 3. *Reversion of Unawarded Fees to the Defendant*

4 Here, the Settlement Agreement states that there will be no reversion of unpaid settlement
5 funds to Amazon.

6 **C. Does Not Grant Preferential Treatment**

7 The proposed settlement appears to treat class members equally. Individual settlement
8 payments will be calculated and apportioned on a pro rata basis depending on the number of
9 "weeks worked" or "workweeks" (defined as any calendar week during the Class Period) in
10 which a Settlement Class Member performed at least one day of work for Amazon. (SA ¶ 50.)
11 Aside from the Class Representative Enhancement Payments, discussed below, all of the class
12 members are subject to the same payment calculations based on the number of weeks worked or
13 workweeks.

14 **D. The Settlement Falls Within the Range of Possible Approval**

15 "To determine whether a settlement 'falls within the range of possible approval' a court
16 must focus on 'substantive fairness and adequacy,' and 'consider plaintiffs' expected recovery
17 balanced against the value of the settlement offer.'" *Collins*, 274 F.R.D. at 302 (quoting *In re
Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080). The Court should examine "the complete
19 package taken as a whole," and the amount is "not to be judged against a hypothetical or
20 speculative measure of what might have been achieved by the negotiators." *Officers for Justice*,
21 688 F.2d at 625, 628.

22 Here, the total proposed settlement is for \$5,500,000. Plaintiffs contend that the settlement
23 provides for recovery that is, as calculated by Plaintiffs, approximately 100% of the amount of
24 unpaid wages that in Plaintiffs' view is owed to the Class Members for spending approximately
25 one minute off-the-clock as a result of the COVID-19 screenings. (Doc. 89 at 15.)

26 Per Plaintiffs, Amazon produced substantial visual evidence of the COVID-19 screenings
27 collected by security cameras at several facilities in California. Additionally, Amazon produced
28 the payroll data and time clock data for the California Class. Plaintiffs then retained three experts:

1 (1) Chad Staller (economist), (2) Nichols Briscoe (economist), and (3) Richard Drogin, Ph.D.
2 Plaintiffs produced to Amazon two expert reports and a damages analysis. The expert reports
3 provided an evaluation of the surveillance data and the amount of time spent undergoing the
4 COVID-19 screenings. (Foty Decl. ¶ 15.)

5 Based upon a review the surveillance data produced by Amazon, Plaintiffs believe that the
6 reasonable range of time spent waiting-in line and being screened was between 58 seconds and
7 one minute and nine seconds. The median amount of time was identified by Plaintiffs' expert at
8 48 seconds and the average amount of time was identified at one minute and three seconds. The
9 settlement provides a recovery of approximately one minute of screening time.

10 Plaintiffs assert the settlement is reasonable because it provides for a recovery that is, as
11 calculated by Plaintiffs, approximately 100% of the amount of unpaid wages that in Plaintiffs'
12 view is owed to the Class members for spending approximately one minute off-the-clock as a
13 result of the COVID-19 screenings. (Doc. 89 at 15.) For this reason, the Court finds that the
14 settlement amount appears to be fair and adequate as it provides for 100% of the expected
15 recovery based on Plaintiffs' own calculations. The proposed settlement amount is well above
16 the general range of percentage recoveries that California courts—including this one—have found
17 to be reasonable. *See Cavazos v. Salas Concrete Inc.*, No. 1:19-cv-00062-DAD-EPG, 2022 WL
18 506005, at *15 (E.D. Cal. Feb. 18, 2022) (examining cases approving settlements ranging from
19 12% to 35% of estimated maximum damages).

20 Plaintiffs' motion represents that there are 250,000 class members. This case equates to a
21 pre-tax recovery of approximately \$22.00 per class member for one minute of time based on the
22 Gross Settlement Fund ($\$5,500,000.00 / 250,000 = \22.00). The net recovery, from the Court's
23 review, equates to a pre-tax recovery of approximately \$12.18 for one minute of time based on
24 the Net Settlement Amount ($\$3,044,125.67 / 250,000 = \12.18).

25 “[I]t must not be overlooked that voluntary conciliation and settlement are the preferred
26 means of dispute resolution [, especially] in complex class action litigation....” *In re Syncor*
27 *ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (quoting *Officers for Justice*, 688 F.2d at 625).
28 Thus, “[a]pproval of settlement is preferable to lengthy and expensive litigation with uncertain

1 results.” *Munoz v. Giumarra Vineyards Corp.*, No. 1:09-cv-00703-AWI-JLT, 2017 WL 2665075,
 2 at *9 (E.D. Cal. June 21, 2017).

3 **E. PAGA Penalty**

4 Under PAGA, an “aggrieved employee” may bring an action for civil penalties for labor
 5 code violations on behalf of himself and other current or former employees. Cal. Lab. Code §
 6 2699(a). A plaintiff suing under PAGA “does so as the proxy or agent of the state’s labor law
 7 enforcement agencies.” *Arias v. Superior Ct.*, 95 Cal. Rptr. 3d 588, 600 (Cal. 2009). A PAGA
 8 plaintiff thus has “the same legal right and interest as state labor law enforcement agencies” and
 9 the action “functions as a substitute for an action brought by the government itself”; therefore, “a
 10 judgment in that action binds all those, including nonparty aggrieved employees, who would be
 11 bound by a judgment in an action brought by the government.” *Id.* A plaintiff bringing a
 12 representative PAGA action not only owes a duty to their “fellow aggrieved workers,” but “also
 13 owes responsibility to the public at large; they act, as the statute’s name suggests, as a private
 14 attorney general.” *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133–34 (N.D. Cal.
 15 2016).

16 Under PAGA, civil penalties collected are distributed between the aggrieved employees
 17 (25%) and the LWDA (75%). Cal. Lab. Code § 2699(i). Any settlement of PAGA claims must be
 18 approved by the court. Cal. Lab. Code § 2699(l)(2). The proposed settlement must also be sent to
 19 the agency at the same time that it is submitted to the court. Cal. Lab. Code § 2699(l)(2).

20 While PAGA requires a trial court to approve a PAGA settlement, district courts have
 21 noted there is no governing standard to review PAGA settlements. *Scott v. Blackstone Consulting,*
 22 *Inc.*, No. 21-CV-1470-MMA-KSC, 2024 WL 271439, at *8 (S.D. Cal. Jan. 24, 2024) (collecting
 23 cases). District courts have applied “a Rule 23-like standard” asking whether the settlement of
 24 the PAGA claims is “fundamentally fair, reasonable, and adequate.” *Id.*

25 First, in accordance with the statutory requirements, the Settlement Agreement required
 26 defense counsel to notify the LWDA of this Settlement Agreement upon the filing of the motion
 27 for preliminary approval. (SA ¶ 54.) LWDA will have an opportunity to file a response to the
 28 proposed settlement. The Settlement Agreement provides for a \$100,000 PAGA payment. This

1 amount represents 1.8% of the Gross Settlement Fund.

2 District courts have approved a broad range of PAGA penalties. *See Magadia v. Wal-*
 3 *Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019) (collecting cases in which
 4 settlements providing for \$10,000 in PAGA penalties were preliminarily or finally approved
 5 despite total settlement amounts of \$900,000 and \$6.9 million), *rev'd in part, vacated in part on*
 6 *other grounds*, 999 F.3d 668 (9th Cir. 2021); *see also Alcala v. Meyer Logistics, Inc.*, No. CV 17-
 7 7211 PSG (AGRx), 2019 WL 4452961, at *9 (C.D. Cal. June 17, 2019) (collecting cases in which
 8 PAGA penalties within the zero to two percent range were approved by courts); *Scott*, 2024 WL
 9 271439, at *8 (approving 5 percent PAGA settlement). The PAGA payment of approximately
 10 1.8% of the Gross Settlement Fund falls within the range of penalties approved by courts.
 11 Further, the Settlement Agreement provides that 75% of the PAGA Penalty will be paid to the
 12 LWDA and 25% will be paid to the PAGA Settlement Members. (SA ¶¶ 25, 48.)

13 **F. Enhancement Awards to Plaintiffs**

14 Incentive payments are to be evaluated individually, and the court should look to factors
 15 such as “the actions the plaintiff has taken to protect the interests of the class, the degree to which
 16 the class has benefitted from those actions, ... the amount of time and effort the plaintiff expended
 17 in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation.” *Staton*, 327 F.3d at
 18 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

19 Plaintiffs request that the Court approve Enhancement Payments to Plaintiffs in the total
 20 amount of \$30,000, representing \$10,000 to each of the three named plaintiffs. (SA ¶¶ 7, 45.)

21 A service award of \$5,000 is presumptively reasonable. *See Harris v. Vector Marketing*
 22 *Corp.*, No. C-08-5198 MEC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012) (collecting cases).
 23 But courts have preliminarily approved higher amounts subject to additional documentation from
 24 class representatives detailing the time and effort expended and actions taken to benefit the
 25 settlement class prior to final approval. *See, e.g., Howell v. Advantage RN, LLC*, No. 17-CV-883
 26 JLS (BLM), 2020 WL 3078522, at *5 (S.D. Cal. June 9, 2020) (preliminarily approving service
 27 award of \$10,000 subject to submission of additional information from plaintiff before final
 28 approval); *Jamil v. Workforce Res., LLC*, No. 18-CV-27 JLS (NLS), 2020 WL 3079221, at *8

(S.D. Cal. June 9, 2020) (preliminarily approving the proposed \$10,000 service award to each named plaintiff, but requesting plaintiffs provide documentation detailing the time and effort they expended in pursuit of the litigation and the actions they took to benefit the settlement class before final approval of the service award); *Castro v. Paragon Indus., Inc.*, No. 1:19-cv-00755-DAD-SKO, 2020 WL 1984240, at *17 (E.D. Cal. Apr. 27, 2020) (preliminarily approving proposed \$15,000.00 incentive award on the condition that plaintiff demonstrate at the final approval stage that the requested award is commensurate with and does not dwarf the average or median award received by the class and FLSA members). In assessing the appropriateness of class representative enhancements or incentive payments, the Court must consider factors such as: (1) the actions the plaintiff took to protect the interests of the class; (2) the degree to which the class has benefitted from those actions; (3) the duration of the litigation and the amount of time and effort the plaintiff expended in pursuing litigation; and (4) any notoriety or personal difficulties encountered by the representative plaintiff. *See Khanna v. Intercon Sec. Systems, Inc.*, No. 2:09-CV-2214 KJM EFB, 2014 WL 1379861, at *10 (E.D. Cal. Apr. 8, 2014).

In supplemental briefing, Plaintiffs submitted declarations for each named plaintiff in support of preliminary approval. (Docs. 104-3, 104-4, 104-5.) Each of the declarations describe the actions the individual Plaintiffs engaged in to support counsel and the approximate amount of time spent. (See, e.g., Boone Decl. ¶¶ 6-7, 9; Rivera Decl. ¶¶ 6-7, 9; Barrera Decl. ¶¶ 6-8.)

At this stage, there is no indication the service awards constitute an improper award to defeat preliminary approval. Based on the foregoing and for purposes of this preliminary approval of the settlement, the Court finds the settlement terms are “within the range of possible approval.”

G. Attorneys' Fees

Class Counsel seeks approval of an attorneys' fee award up to 1/3 of the Gross Settlement Fund (\$1,833,333.33). (SA ¶ 44.) Pursuant to the Settlement Agreement, Amazon will not be responsible for attorneys' fees for or costs and expenses incurred by counsel for the named plaintiffs that is not Class Counsel. Payment to Parmet PC and The Nourmand Law Firm will be

1 made from the Class Counsel award. (*Id.*)

2 “In a certified class action, the court may award reasonable attorneys’ fees and nontaxable
 3 costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Where a
 4 settlement produces a common fund for the benefit of the entire class, courts have discretion to
 5 employ either the lodestar method or the percentage-of-recovery method” when determining the
 6 reasonableness of a request for attorneys’ fees. *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at
 7 942; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (concluding district court
 8 has discretion in a common fund case to choose either the lodestar method or the percentage-of-
 9 the-fund method when calculating reasonable attorneys’ fees). Under the percentage-of-recovery
 10 method, 25% of a common fund is the benchmark for fee awards. *See, e.g., In re Bluetooth*, 654
 11 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee
 12 award, providing adequate explanation in the record of any ‘special circumstances’ justifying a
 13 departure.”). Under the lodestar method, a “lodestar figure is calculated by multiplying the
 14 number of hours the prevailing party reasonably expended on the litigation (as supported by
 15 adequate documentation) by a reasonable hourly rate for the region and for the experience of the
 16 lawyer.” *Id.* at 941 (citing *Staton*, 327 F.3d at 965). The product of this computation, the
 17 “lodestar” amount, yields a presumptively reasonable fee. *Gonzalez v. City of Maywood*, 729 F.3d
 18 1196, 1202 (9th Cir. 2013); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).
 19 The Ninth Circuit has recommended that district courts apply one method but cross-check the
 20 appropriateness of the amount by employing the other as well. *See Bluetooth*, 654 F.3d at 944.

21 The 25% benchmark may be adjusted upward or downward based on (1) the results
 22 achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the
 23 contingent nature of the fee; (5) the burdens carried by counsel; and (6) the awards made in
 24 similar cases. *Vizcaino*, 290 F.3d at 1048–50.

25 *Results Achieved*

26 Courts have recognized that the result achieved for the class is a major factor to be
 27 considered in making a fee award. *Hensley v. Eckerhart* 461 U.S. 424, 436 (1983); *Wilcox v. City*
 28 *of Reno*, 42 F.3d 550, 554 (9th Cir. 1994). The Ninth Circuit has observed that “[e]xceptional

1 results are a relevant circumstance” to an adjustment from the benchmark award. *Vizcaino*, 290
2 F.3d at 1048.

3 Plaintiffs’ Counsel contends that the fee request is justified because that they achieved a
4 positive result and obtained significant monetary relief for the Class. Counsel reiterates that the
5 settlement provides a recovery of approximately 100% of the amount owed, assuming one minute
6 was spent off-the-clock as a result of the COVID screenings. (Doc. 104 at 28-29.) Additionally,
7 counsel notes that this recovery provides significant relief for the Class given the complexity of
8 the issues, the risk and uncertainty inherent in class action litigation, and the myriad factual and
9 legal defenses advanced by Amazon. (*Id.* at 29.)

10 *Risks of Litigation*

11 Risk is a relevant circumstance. *See In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th
12 Cir.1995) (holding fees justified “because of the complexity of the issues and the risks”).

13 According to Plaintiffs’ Counsel, they have taken considerable risk in litigating this case,
14 not only because it was done on a contingency basis, but also because complex, wage-and-hour
15 litigation is an ever-developing area of the law that poses significant risks. (Doc. 104 at 29.)

16 With respect to the liability issues, Plaintiffs indicate that Amazon argued that the amount
17 of time spent undergoing the screenings was a matter of seconds. Amazon implemented thermal
18 scanners that it contends allowed for a seamless screening process. Additionally, Amazon
19 allowed its employees to download an app on their cell phones which allowed them to clock-in
20 prior to the start of their screenings. These facts presented hurdles to the Plaintiffs’ claims. (Doc.
21 104 at 29.)

22 With respect to class certification, Plaintiffs indicate that Amazon asserted that the claims
23 raised by the Plaintiffs were not certifiable. With respect to certifiability of the derivative wage
24 statement claim, Amazon argued that class certification was tied to the certifiability of the
25 underlying claims and are thus subject to the same risks. Success by Plaintiffs on any of these
26 issues was not a foregone conclusion at any time. Nevertheless, Plaintiffs’ Counsel “persevered at
27 great risk (while foregoing other profitable work) on a contingency basis, against a large,
28 nationwide employer and brought this case to stellar resolution for the Class. As such, these

1 numerous litigation risks further justify the sought fees award.” (Doc. 104 at 29.)

2 *Skill and Quality of the Work*

3 The Court does not doubt Class Counsel are experienced and skilled litigators.

4 *Contingent Nature of the Fee and Burdens Carried*

5 “It is an established practice in the private legal market to reward attorneys for taking the
6 risk of non-payment by paying them a premium over their normal hourly rates for winning
7 contingency cases.” *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299
8 (9th Cir. 1994). Thus, whether counsel have taken the case on a contingency fee basis must be
9 considered when deciding to vary from the 25% benchmark. Here, Class Counsel have
10 prosecuted this case wholly on a contingency basis. (Doc. 104 at 31.)

11 *Burdens Carried by Class Counsel*

12 Class Counsel have provided information as to the costs in prosecuting this action,
13 indicating that they have incurred \$69,881.64 in actual out-of-pocket expenses. (Doc. 104 at 32;
14 Doc. 104-2, Supplemental Declaration of Dan Foty (“Foty Suppl. Decl.”) ¶¶ 38-40.) Counsel
15 indicates that the amount represents approximately 1.2% of the total settlement. Plaintiffs’
16 Counsel have demonstrated their burden as to incurred costs over the course of this litigation.

17 *Awards Made in Similar Cases*

18 As noted above, 25% is the Ninth Circuit’s “benchmark award for attorney[s]’ fees.”
19 *Hanlon*, 150 F.3d at 1029. To support their claim for 1/3 of the Gross Settlement Fund, Plaintiffs
20 argue that courts routinely approve attorney’s fees of percentages equal to or greater than that
21 sought by Plaintiffs in this action. (Doc. 104 at 38.) Plaintiffs cite cases in which courts
22 approved common fund fee awards equivalent to or greater than the percentage requested here.
23 (Doc. 104 at 26); *see, e.g., Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-cv-00474,
24 2017 WL 749018, at *8 (E.D. Cal. Feb. 27, 2017) (approving an award of attorneys’ fees equal to
25 one-third of the total fund); *Villalpando v. Exel Direct Inc.*, No. 3:12-cv-04137-JCS, 2016 WL
26 7740854, at *2 (N.D. Cal. Dec. 12, 2016) (approving attorneys’ fee award of one-third of the
27 common fund).

28 Given that the percentage of the fund is above the Ninth Circuit’s benchmark, the Court

1 will conduct a cursory lodestar cross check. If a court applies the percentage method, it then
 2 typically calculates the lodestar as a “cross-check to assess the reasonableness of the percentage
 3 award.” *See, e.g., Weeks v. Kellogg Co.*, No. CV-09-8102-MMM-RZx, 2013 WL 6531177, at *25
 4 (C.D. Cal. Nov. 23, 2013); *Suarez v. Bank of Am., Nat'l Ass'n*, No. 18-CV-01202-LB, 2024 WL
 5 150721, at *3 (N.D. Cal. Jan. 11, 2024). To guard against an unreasonable result, the Ninth
 6 Circuit has encouraged district courts to cross-check any calculations done in one method against
 7 those of another method. *See Vizcaino*, 290 F.3d at 1050–51. The “lodestar” approach calculates
 8 attorney fees by multiplying the number of hours reasonably expended by a reasonable hourly
 9 rate. *Gonzalez*, 729 F.3d at 1202; *Camacho*, 523 F.3d at 978. Where, as here, the lodestar is
 10 employed to cross-check a percentage-of-fund determination, courts may do a rough calculation.
 11 *In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295
 12 F.R.D. 438, 460 (C.D. Cal. 2014).

13 In their supplemental briefing, Plaintiffs submitted information about the number of hours
 14 worked and the attorney hourly rates for both Hodges & Foty, LLP and the Nourmand Law Firm.
 15 The following chart provides a summary of the lodestar as calculated based on the rates and hours
 16 provided by Plaintiffs’ counsel:

NAME	EXPERIENCE ¹	RATE	HOURS	TOTAL
David Hodges (Attorney)	1996	\$1,057	47	\$49,679.00
Don Foty (Attorney)	2006	\$900	972.2	\$874,980.00
Michael Nourmand (Attorney)	1998	\$900	126	\$113,400.00
Heather Heartfield (Attorney)	[1995]	\$900	110.7	\$99,630.00
William Hogg (Attorney)	[2013]	\$850	12.8	\$10,880.00
James De Sario (Attorney)	2009	\$600	93	\$55,800.00

25
 26 ¹ The Court takes judicial notice of the State Bar of California website, which shows that Attorney
 27 Nourmand was admitted to practice in December 1998, and has close to 26 years of experience.
 28 Experience for Attorneys Heartfield and Hogg are based on law school graduation years. The Court notes
 that Attorney Hogg is admitted to practice in both Texas and California and, according to the State Bar of
 California website, was admitted to practice in California in July 2021. (Doc. 104-2, Foty Suppl. Decl. ¶¶
 20, 22.)

1	Patty Barnes (Paralegal)	3 years	\$239	78.9	\$18,857.10
2	Ricardo Guzman (Paralegal)	6 years	\$239	3.2	\$764.80
3	Marta Ponce (Paralegal)	7 years	\$239	9.1	\$2,174.90
4	D'Yonna Pitter (Paralegal)		\$239	7	\$1,673.00
5	Marlana Armendariz (Paralegal)	2 years	\$239	6.8	\$1,625.20
6	JoAnna Valdez (Paralegal)	3 years	\$239	10.3	\$2,461.70
7					
8					
9	TOTAL			1,477	\$1,231,925.70

10 (See Doc. 104-2, Foty Suppl. Decl. ¶ 35.)

11 The hourly rates provided by Plaintiffs' counsel are largely based upon the Adjusted
 12 Laffey Matrix for the District of Colombia. Plaintiffs assert that this matrix has been used by
 13 California district courts in determining reasonable hourly rates. (Doc. 104 at 33 n.9 (citing
 14 cases).)

15 In the Fresno Division of the Eastern District of California, attorneys with twenty or more
 16 years of experience are awarded \$350.00 to \$400.00 per hour. *See, e.g., Leprino Foods Co. v.*
JND Thomas Co., Inc., No. 1:16-CV-01181-LJO-SAB, 2017 WL 128502, at *13 (E.D. Cal. Jan.
 17 12, 2017), *report and recommendation adopted in part*, No. 1:16-CV-01181-LJO-SAB, 2017 WL
 18 432480 (E.D. Cal. Feb. 1, 2017) (finding \$400.00 per hour a reasonable hourly rate for attorney
 19 with more than thirty years of experience); *Sanchez v. Frito-Lay, Inc.*, No. 1:14-CV-00797-AWI-
 20 MJS, 2015 WL 4662636, at *18 (E.D. Cal. Aug. 5, 2015), *report and recommendation adopted*,
 21 No. 1:14-CV-797-AWI-MJS, 2015 WL 5138101 (E.D. Cal. Aug. 26, 2015) (finding reasonable
 22 rate for attorney with twenty years of experience was \$350 per hour in a wage and hour class
 23 action). Generally, “\$300 is the upper range for competent attorneys with approximately a decade
 24 of experience.” *Barkett v. Sentosa Props. LLC*, No. 1:14-CV-01698-LJO, 2015 WL 5797828, at
 25 *5 (E.D. Cal. Sept. 30, 2015) (O'Neill, J.) (citing *Silvester v. Harris*, No. 1:11-CV-2137 AWI
 26 SAB, 2014 WL 7239371, at *4 (E.D. Cal. Dec. 17, 2014)). For attorneys with “less than ten years
 27

28 SAB, 2014 WL 7239371, at *4 (E.D. Cal. Dec. 17, 2014)). For attorneys with “less than ten years

1 of experience ... the accepted range is between \$175 and \$300 per hour.” *Silvester*, 2014 WL
 2 7239371 at *4 (citing *Willis v. City of Fresno*, 1:09-cv-01766-BAM, 2014 WL 3563310 (E.D.
 3 Cal. July 17, 2014).

4 Recent cases in this district have maintained the same hourly rates. *Accord Deerpoint*
 5 *Grp., Inc. v. Agrigenix, LLC*, No. 1:18-cv-00536-AWI-BAM, 2022 WL 16551632, at *19 (E.D.
 6 Cal. Oct. 31, 2022); *Langer v. Cooke City Raceway, Inc.*, No. 1:21-CV-01488-JLT-BAK, 2022
 7 WL 2966172, at *16 (E.D. Cal. July 27, 2022), *report and recommendation adopted*, No. 1:21-
 8 cv-01488-JLT-BAK, 2022 WL 3348015 (E.D. Cal. Aug. 12, 2022); *Webb v. Cty. of Stanislaus*,
 9 No. 1:19-cv-01716-DAD-EPG, 2022 WL 446050, at *6 (E.D. Cal. Feb. 14, 2022) (“In the Fresno
 10 Division of the Eastern District of California, generally, attorneys with twenty or more years of
 11 experience are awarded \$325.00 to \$400.00 per hour, attorneys with ten to twenty years of
 12 experience are awarded \$250.00 to \$325.00, attorneys with five to ten years of experience are
 13 awarded \$225.00 to \$250.00, and less than \$200.00 for attorneys with less than five years of
 14 experience.”) Finally, “[t]he current reasonable hourly rate for paralegal work in the Fresno
 15 Division ranges from \$75 to \$150, depending on experience.” *Silvester*, 2014 WL 7239371, at *4
 16 (citations omitted); *cf. Franco v. Ruiz Food Prods., Inc.*, No. 1:10-cv-02354-SKO, 2012 WL
 17 5941801, at *20 (E.D. Cal. Nov. 27, 2012) (approving a rate of “\$100 per hour” for “legal
 18 assistants”).

19 The rates Plaintiffs propose range from \$600 per hour, at the low end, to \$1,057 per hour,
 20 at the high end. Counsels’ stated rates are high and above the upper limit of rates generally
 21 accepted in this District. Therefore, the rates will be adjusted for purposes of the lodestar
 22 calculation with a rate of \$400 for David Hodges (47 hours), Michael Nourmand (126 hours), and
 23 Heather Heartfield (110.7 hours), a rate of \$325 for Dan Foty (972.2 hours), William Hogg (12.8
 24 hours), and James De Sario (93 hours), a rate of \$150 for paralegals Guzman (3.2 hours) and
 25 Ponce (9.1 hours), and a rate of \$100 for paralegals Barnes (78.9 hours), Pitter (7 hours),
 26 Armendariz (6.8 hours), and Valdez (10.3 hours).

27 In addition, the Court must also consider the reasonable number of hours spent. The total
 28 number of hours worked is 1,477, which includes 115.3 hours of paralegal time. Given the three-

1 year span of this litigation, the hours expended appear reasonable for purposes of preliminary
2 approval.

3 Therefore, a rough lodestar calculation using the hourly rates identified by the Court
4 yields \$475,975.00 in fees (\$400 x 283.7 hours = \$113,480.00; \$325 x. 1,078 hours =
5 \$350,350.00; \$150 x 12.3 hours = \$1,845.00; \$100 x 103 hours = \$10,300.00).

6 Beyond simply the multiplication of a reasonable hourly rate by the number of hours
7 worked, the court may enhance the lodestar with a multiplier. “Multipliers in the 3–4 range are
8 common in lodestar awards for lengthy and complex class action litigation.” *Van Vranken v. Atl.*
9 *Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (citing *Behrens v. Wometco Enters., Inc.*,
10 118 F.R.D. 534, 549 (S.D. Fla. 1988)); *see also Vizcaino*, 290 F.3d at 1051–54 and n.6 (affirming
11 a 28% fee recovery, explaining that the 3.65 multiplier “was within the range of multipliers
12 applied in common fund cases” and recognizing that courts applied multipliers of 1.0 to 4.0 in
13 83% of 24 class action suits surveyed); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent*
14 *Actions*, 148 F.3d 283, 341 (3d Cir. 1998) (“[M]ultiples ranging from one to four are frequently
15 awarded in common fund cases when the lodestar method is applied.”) (citation omitted); *Ferrell*
16 *v. Buckingham Prop. Mgmt.*, No. 1:19-cv-00332-JLT-BAK (EPG), 2022 WL 224025, at *3 (E.D.
17 Cal. Jan. 25, 2022). Based on the Court’s lodestar crosscheck, a multiplier of approximately 3.86
18 is necessary to reach the \$1,833,333.33 in fees Class Counsel is requesting in this action. This
19 multiplier is within the range commonly approved. The Court therefore concludes that the
20 lodestar crosscheck warrants an upward departure from the Ninth Circuit’s 25% benchmark.
21 Class Counsel’s requested 33% is reasonable, and the Court preliminarily approves attorneys’
22 fees at the rate of 1/3 of the common fund (\$1,833,333.33).

23 **H. Costs**

24 Rule 23(h) provides that, “[i]n a certified class action, the court may award reasonable
25 attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed.
26 R. Civ. P. 23(h). Counsel are entitled to reimbursement of the out-of-pocket costs they reasonably
27 incurred investigating and prosecuting the case. *See In re Media Vision Tech. Sec. Litig.*, 913 F.
28 Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92

(1970)); *see also Staton*, 327 F.3d at 974. The Ninth Circuit has held that an award to a prevailing party “can include reimbursement for out-of-pocket expenses including ... travel, courier and copying costs.” *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010). Other recoverable expenses include expenses related to discovery and expenses related to computerized research. *See Harris v. Marhoefer*, 24 F.3d 16, 19–20 (9th Cir. 1994) (noting that “expenses related to discovery” are recoverable); *Trs. Of Constr. Indus. & Laborers’ Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258–59 (9th Cir. 2006) (holding that “reasonable charges for computerized research may be recovered.”); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646 (S.D. Cal. 2011) (holding that consulting fees as costs were reasonable because the evidence was necessary to negotiate a settlement).

Plaintiffs seek up to \$100,000 in costs. (SA ¶ 2, 44.) As previously noted, Class Counsel indicate that they have incurred \$69,881.64 in actual out-of-pocket expenses. (Doc. 104 at 32; Doc. 104-2, Foty Suppl. Decl. ¶¶ 38-40.) Class Counsel identify these costs to include amounts expended for experts, mediation, filing and service fees, research, and copying. (Foty Suppl. Decl. ¶¶ 38-40.) Having considered the supplemental declaration, the Court approves the request for costs on a preliminary basis.

I. Notice Requirements

Under Rule 23(c)(2)(B), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The Rule directs: The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). “Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citation and internal

1 quotations omitted).

2 The proposed, amended Notice Packet here complies with Rule 23(c)(2). (Doc. 104-1,
3 Ex. 1, Notice Packet.) The Notice Packet includes the nature of the action, the class definition,
4 the class claims, the terms of the settlement, and information that the class member may be
5 represented by an attorney, the binding effect of the class judgment, how and when to opt-out,
6 and how to object to the settlement. The Rule 23 notice also provides information regarding the
7 final approval hearing.

8 In addition, the parties agree the “best form of notice practicable” is to send the Notice
9 Packet via email. (SA ¶ 56; Doc. 104 at 16-17.) Rust Consulting will send a Notice Packet to all
10 class members using the most current, known personal email addresses of class members as
11 identified by Amazon in the Class List. (SA ¶¶ 55, 56.) If there is no personal email address,
12 Rust Consulting will mail a Notice Packet via regular First-Class U.S. Mail, using the most
13 current, known mailing addresses identified in the class list. (SA ¶ 56.) Rust Consulting will use
14 the National Change of Address Database to verify the accuracy of addresses on the Class List for
15 class members who do not have personal email addresses before mailing. (SA ¶ 57.)

16 With respect to any Notice Packets sent via email for which Rust Consulting receives an
17 auto-reply indicating that the email was non-deliverable, a Notice Packet will be sent promptly
18 via regular First-Class U.S. Mail within five (5) business days of receipt of the auto-reply. Any
19 Notice Packets sent via regular First-Class U.S. Mail and returned to the Rust Consulting as non-
20 deliverable, will be sent promptly via regular First-Class U.S. Mail within five (5) business days
21 of receipt to any forwarding address. If no forwarding address is provided, the Settlement
22 Administrator will promptly attempt to determine the correct address using a skip-trace or other
23 search using the name, address, and/or Social Security number of the class member involved, and
24 will then perform a single re-mailing within five (5) business days of receipt. (SA ¶ 57.)

25 Rust Consulting will provide all counsel with a weekly report that identifies the number of
26 Class Members who have submitted a valid Request for Exclusion, Objection, and whether any
27 Class Member submitted a challenge to any information contained in the Notice Packet. (SA ¶
28 67.)

1 The Court finds the notice and the method of delivery are appropriate and appear to be the
2 “best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). The Court
3 also finds it significant that there is no opt-in procedure here, as Class Members do not have to
4 confirm workweeks or take other action to have a check mailed to them, and there is no reversion
5 to Amazon.

CONCLUSION AND ORDER

For the reasons stated, the Court will grant Plaintiffs' motion for preliminary approval of the settlement. The Court preliminarily concludes that the proposed settlement, on the current record, is "fair, reasonable, and adequate" within the meaning of Rule 23(e)(2).

10 | Accordingly, IT IS HEREBY ORDERED that:

11 1. The motion for preliminary approval of the class action settlement (Doc. 89), as
12 supplemented, is GRANTED;

13 2. A hearing on the Final Approval of the settlement (“Final Approval Hearing”) will be
14 held before the Honorable Barbara A. McAuliffe in Courtroom 8 of the United States District
15 Court for the Eastern District of California located at 2500 Tulare Street, Sixth Floor, Fresno,
16 California, 93721 on **October 29, 2024, at 9:00 a.m.** to determine: whether the proposed
17 Settlement, on the terms and conditions provided for in the Settlement Agreement, is fair,
18 reasonable, and adequate and whether said Settlement should be finally approved by the Court.
19 The Court may adjourn or continue the Final Approval Hearing without further notice to the Class
20 Members;

21 3. The following persons are conditionally certified as Class Members solely for the
22 purpose of entering a settlement in this matter:

23 All current and former non-exempt employees of Amazon.com Services, LLC in
24 California who underwent one or more COVID-19 temperature screenings during
25 the period of April 1, 2020 through July 17, 2021 for individuals who did not
work at the facility known as OAK4 in Tracy, California, or the period of April 1,
2020 through February 23, 2022 for those individuals who worked at the facility
known as OAK4 in Tracy, California.

27 4. The Court finds that, for settlement purposes only, the settlement class meets the
28 requirements for certification under Rule 23 of the Federal Rules of Civil Procedure in that: (1)

1 the class is ascertainable and so numerous that joinder of all members of the class is
2 impracticable; (2) there are common questions of law and fact, and the questions of law and fact
3 common to the class predominate; (3) Plaintiffs' claims are typical of the claims of the members
4 of the class; (4) Plaintiffs will fairly and adequately protect the interests of the members of the
5 class; and (5) a class action is superior to other available methods for the efficient adjudication of
6 the controversy.

7 5. The Court finds that, on a preliminary basis, that the Settlement Agreement, entered
8 into among the parties and their counsel, is fair, adequate and reasonable. It further appears to the
9 Court that the parties conducted investigation and research, and that they were able to reasonably
10 evaluate their position and the strengths and weaknesses of the claims. The parties have provided
11 the Court with enough information about the nature and magnitude of the claims being settled, as
12 well as the impediments to recovery, to make an independent assessment of the reasonableness of
13 the terms to which the parties have agreed. Settlement now will avoid additional and potentially
14 substantial litigation costs, as well as delay and risks if the parties were to continue to litigate this
15 case. It further appears that the Settlement Agreement has been reached as the result of intensive,
16 serious, and non-collusive arms-length negotiations, and was entered into in good faith.

17 6. The Court preliminarily finds that the settlement, which provides for a Gross Settlement
18 Fund of \$5,500,000 for approximately 250,000 Class Members, appears to be within the range of
19 reasonableness of a settlement that could ultimately be given final approval by this Court. The
20 Gross Settlement Fund includes all attorneys' fees, litigation costs, Settlement Administration
21 Costs, and Class Representative Enhancement Payments.

22 7. The Court hereby preliminarily approves Class Counsel's request for attorneys'
23 fees in the amount of 1/3 of the Gross Settlement Fund (\$1,833,333.33) and costs in an amount up
24 to \$100,000.00 to be paid out of the Gross Settlement Fund

25 8. The Court hereby preliminarily approves the Class Representative Enhancement
26 Payments in the total amount of \$30,000 to be paid out of the Gross Settlement Fund.

27 9. Rust Consulting, Inc. is appointed to act as the Settlement Administrator, pursuant to
28 the terms set forth in the Settlement Agreement.

1 10. Plaintiffs Heather Boone, Roxanne Rivera, and Cristian Barrera are appointed as the
2 Class Representatives and the representatives of the Settlement Class for settlement purposes
3 only;

4 11. Plaintiffs' Counsel Hodges & Foty, LLC are appointed Class Counsel; Class Counsel
5 are authorized to act on behalf of the Class Representatives and the Settlement Class with respect
6 to all acts or consents required by or which may be given pursuant to the Settlement and such
7 other acts reasonably necessary to consummate the Settlement; the authority of Class Counsel
8 includes entering into any necessary modifications or amendments to the Settlement on behalf of
9 the Class Representatives and the Settlement Class which they deem appropriate;

10 12. The settlement of Plaintiffs' PAGA claim is fair and reasonable, and the Court
11 preliminarily approves the Settlement and release of that claim as well as the PAGA Allocation in
12 the amount of \$100,000, which includes payment to the LWDA and to the PAGA Settlement
13 Class Members;

14 13. The Court preliminarily approves the Non-California Payments totaling \$200 for the
15 Non-California FLSA Opt-In plaintiffs.

16 14. The Court hereby approves, as to form and content, the Notice Packet (Doc. 104-1,
17 Ex. 1) accompanying Plaintiffs' Supplemental Briefing. The rights of any potential objectors to
18 the proposed Settlement are adequately protected in that they may exclude themselves from the
19 Settlement and proceed with any alleged claims they may have against Amazon, or they may
20 object to the Settlement and appear before this Court. However, to do so, they must follow the
21 procedures outlined in the Settlement Agreement which are set out in the Notice Packet.

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1 15. The Court finds that the emailing and/or mailing of the Notice Packet substantially in
2 the manner and form as set forth in the Settlement Agreement and this Order meets the
3 requirements of Federal Rules of Civil Procedure, Rule 23 and due process, and is the best notice
4 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
5 entitled thereto.

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7 IT IS SO ORDERED.

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Dated: May 22, 2024

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE

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